

ENTERED

March 27, 2018

David J. Bradley, Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

RICHARD LAMAR GRANVILLE,

Plaintiff,

VS.

UNIVERSITY OF TEXAS MEDICAL
BRANCH, *et al*,

Defendants.

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CIVIL NO. 2:17-CV-85

ORDER

The Court now considers the March 28, 2017, Memorandum and Recommendation (“M&R”) of the Magistrate Judge to whom this case was referred (Dkt. No. 7) and Plaintiff’s objections to the M&R (Dkt. No. 9).

On February 27, 2017, Plaintiff filed a civil rights complaint against Defendants, alleging deliberate indifference to serious medical needs and retaliation. Dkt. No. 1. On March 28, 2017, the Magistrate Judge issued an M&R recommending that Plaintiff’s claims be dismissed for failure to state a claim and/or as frivolous. Dkt. No. 7.

Plaintiff’s objections primarily focus on his disagreement with a \$100 co-pay that was charged to his inmate account after his blood pressure was taken by Defendant Nurse Antu. *See* Dkt. No. 9 at 5. Plaintiff argues that he was denied procedural due process because the co-pay was unlawful under Texas Government Code § 501.063, which states that an inmate “who initiates a visit to a health care provider shall pay a health care services fee to the department in the amount of \$100.” TEX. GOV. CODE. § 501.063.

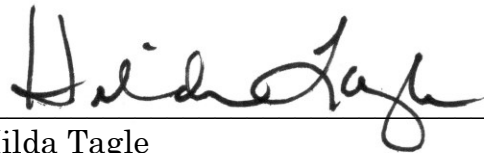
The Court need not address the merits of Plaintiff’s due process claim because he did not allege a due process claim in his complaint or *Spears* hearing testimony. Plaintiff has not pleaded a due process claim and first introduced this claim in his objections to the Magistrate Judge’s M&R. It will therefore not be

considered by the Court. *See Finley v. Johnson*, 243 F.3d 215, 219 n. 3 (5th Cir. 2001) (“We have held that issues raised for the first time in objections to the report of a magistrate judge are not properly before the district judge.”) (citing *United States v. Armstrong*, 951 F.2d 626, 630 (5th Cir. 1992)).

Accordingly, and after independently reviewing the record and applicable law, the Court **ADOPTS** the Magistrate Judge’s March 28, 2017, M&R (Dkt. No. 7) and **DISMISSES WITH PREJUDICE** Plaintiff’s complaint for failure to state a claim and/or as frivolous pursuant to 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b)(1). This dismissal counts as a “strike” for purposes of 28 U.S.C. § 1915(g), and the Court therefore **DIRECTS** the Clerk of the Court to send notice of this dismissal to the Manager of the Three-Strikes List for the Southern District of Texas at Three_Strikes@txs.uscourts.gov.¹

Final Judgment will be entered separately.

SIGNED this 27th day of March, 2018.

A handwritten signature in black ink, appearing to read 'Hilda Tagle', written over a horizontal line.

Hilda Tagle
Senior United States District Judge

¹ The Magistrate Judge’s M&R recommends that notice of this dismissal be sent by mail to Beverly Goolsby in the Southern District of Texas Clerk’s Office. The Court modifies the recommendation to conform to current Southern District of Texas practice regarding the Three-Strikes List.